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Supreme Court of the United States

October Term, 1937

No. 641

J. D. ADAMS MANUFACTURING COMPANY,

Appellant,

vs.

WILLIAM STOREN, as Chief Administrative Officer
of The Department of Treasury of the State of
Indiana, et al.,

Appellees.

Appeal From the Supreme Court of the State of Indiana

SUPPLEMENT TO APPELLANT'S BRIEF
AND APPENDIXES C AND D

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SUPPLEMENT TO PART I OF APPELLANT'S BRIEF TOUCHING INTERSTATE COMMERCE

A. Under the general taxation law of Indiana, all property is assessed for taxation at its "true cash value". In the case of corporations and all other business concerns, earning capacity and other elements entering into the value of a going concern are taken into consideration in determining the valuation for tax purposes. To this valuation, interstate and foreign business adds its share in the proportion which it bears to the total business of the taxpayer. In thus directly contributing to *property taxes*, interstate commerce "pays its way" in Indiana, entirely outside of the gross receipts tax on such commerce.

"All property within the jurisdiction of this state, not expressly exempted, shall be subject to taxation. All property of every kind and nature, both real and personal, and wherever situated, owned or possessed, and subject to taxation within the state of Indiana, shall be assessed and valued for taxation purposes, at the true cash value thereof, on the first day of March in each year in which it is subject to assessment and valuation for taxing purposes. The rate of taxation on all property shall be equal." (Acts of 1919, ch. 59, Sec. 3, p. 198; Ind. Stat. Ann. (Burns'), Sec. 64-103).

"* * * In determining and settling such valuation, such assessor, except as otherwise provided in this act, shall be governed by what is the true cash value, and in determining the true cash value, he may consider the market or usual selling price, or *the earning capacity of such property* and all other facts and circumstances which may give any information concerning the true cash value. * * *" (Acts 1919, ch. 59, Sec. 61, p. 198; Ind. Stat. Ann. (Burns'), Sec. 64-601).

B. In appellees' brief there is set out as Appendix E, at page 93, a statement of the taxes collected in Indiana from 1929 to 1937. Appendix E was apparently designed as support for the argument made at pages 39 to 41 of appellant's brief that the gross income tax is *in lieu* of property taxes. Unexplained, Appendix E is misleading. The figures are doubtless correct, but they do not present a complete and true picture of the results of the gross income tax in relation to property taxes. This cannot be done by general state totals. Whether a tax is an actual burden on commerce, or whether it is actually *in lieu* of property taxes, depends upon its concrete effect upon the taxpayer and not upon its relation to the state as a whole.

The Appendix does show a reduction of property taxes and also of total taxes. The impression is left that the gross income tax was responsible for this reduction. This is incorrect. In a large measure, the reduction is due to the general retrenchment in local government during the depression, to the influx of federal funds for relief which were not available prior to 1933, and to reduced commodity prices on supplies required by government.

But the reduction in total taxes was not shared proportionately by the industrial centers of the State. When the tax system is understood, the reason for this difference is apparent. Chapter 96 of the Acts of Indiana, 1933 (Burns' Ind. Stat. 1933, Sec. 28-1001) was a companion measure of the gross income tax act. Chapter 96 provided for payment out of the general fund of the State to every school unit in the state \$600 per annum for every licensed instructor. By amendments, the allowance has been increased to \$700 (Chapter 161, Acts 1935, Chapter 194, Acts 1937). The source of revenue to the general fund to provide for these payments was the gross income tax. The result of the operation of these companion measures demonstrates clearly that even if the Court should look to all the laws of the State to determine the effect of the gross income tax, as contended by appellees, the tax still constitutes an additional direct burden on industry.

There are 92 counties in Indiana. One-half of the population resides in the 15 large counties. All, or practically all, of the large commercial enterprises of the State are located in the 15 large counties. About 65% of the entire gross income tax is paid by taxpayers in these 15 counties. The tax goes into the general fund of the State. By far the largest single items paid out of the general fund are the sums paid to local school units under the provisions of

the companion measure of the gross income tax act referred to above.

There follows "Appendix C" showing the amount of property taxes and gross income taxes collected, together with funds returned to school units in the 15 largest and 5 of the small counties of the State. The period covered is the same as that covered by Appendix E of appellees' brief.

A glance at Appendix C shows clearly that the gross income tax is an additional burden on commercial enterprise, and is not *in lieu* of property taxes. Prior to 1933, the major portion of the cost of operation of schools was borne by local property taxes in the school units. Now, however, by virtue of the gross income tax act and its companion measure, large sums are annually paid from the general fund of the State to local school units, the general fund being fed primarily by the gross income tax. So the reduction of property taxes (to the extent not accounted for by reduced commodity prices, retrenchment in government, and federal funds) is due chiefly to the fact that the operation of schools in the small counties was no longer supported by local property taxes but from the general fund—that is, from gross income taxes. But the large counties which pay the major portion of the gross income taxes do not receive funds for school purposes in the same proportion as the small counties, nor in proportion to their contributions to such taxes.

For example—in Marion County (the largest county, and the one in which appellant's plant is located), the gross income tax paid ranged from \$2,000,000 in 1933 to nearly \$5,000,000 in 1936, while payments from the State for school purposes to units in Marion County ran from only \$800,000

to \$1,000,000 in the same years. On the other hand, in Brown County, the payment of gross income tax ranged from only \$2,000 in 1933 to \$4,000 in 1936, while payments from the state general fund for school purposes ranged from \$22,000 to \$27,500 in the same period.

Thus, the plain effect of the gross income tax law and its companion measure is to put an additional burden on the industrial centers of the state wherein much the largest portion of interstate commerce originates, and largely to impose upon such centers the cost of the schools in small units of the state. And the reduction of property taxes, if any, attributable to the gross income tax has been brought about primarily in the small non-commercial counties at the expense of the large industrial counties.

It should be remembered also that gross income tax figures do not as yet include the accrued taxes on interstate commerce, which to date, under provisions of Regulation 3801 of the Gross Income Tax Division (Statement as to Jurisdiction, p. 48) have been deferred.

Appellant has set out Appendix C not for the purpose of questioning the right of the State to provide that the schools shall be so financed, but for the purpose of demonstrating that the gross income tax is not *in lieu* of property taxes, but as to practically all business constitutes an addition to property taxes.

How true this statement is appears from "Appendix D" which shows the actual taxes paid by this appellant, and demonstrates clearly that as to companies such as appellant, the property tax burden has not been decreased, and that in addition the gross income tax, if collected on receipts from interstate commerce, has more than doubled the total tax burden. What is true of the appellant is

typical of the majority of industrial enterprises in the state engaged in interstate commerce. The gross income tax and its companion measure have operated not to reduce property taxes but to substantially increase the tax burden on industrial enterprises.

SUPPLEMENT TO PART II OF APPELLANT'S BRIEF TOUCHING IMPAIRMENT OF CONTRACT

Appellee cites and relies upon Sec. 25, Chap. 59, Acts of Indiana 1919, Burns' Ind. Stat. 1933, Sec. 64-506 (see appellee's brief, pp. 18, 81). This section was not cited or relied upon either in the trial court or the state Supreme Court. In fact, the section has by implication been repealed by Chapters 81, 82 and 83, Acts of Indiana 1933 (Burns' Stat. 1933, Sec. 64-801, 64-822, 64-901, et seq.). These three statutes provide for the taxation of intangible property, such as stocks, bonds, notes and the like, building and loan stock and bank deposits, not in the same manner as personal property, as they were theretofore assessed, but only in the manner provided in these respective acts. These laws went into force the day following the effective date of the gross income tax act, and so far as accrued interest on bonds is concerned, such interest is now taxed exclusively under these foregoing acts.

Section 25 of Chapter 59 of the Acts of 1919 referred to in appellees' brief simply relates to the *listing for taxation* of accrued interest on bonds. This Section stands directly in conflict with these three later acts and therefore is impliedly repealed by these acts. Appellant had assumed, since the Section was not cited in either the trial or state court, that appellees had recognized the fact that the Sec-

tion no longer had any operative effect, and therefore no bearing upon the present case.

Respectfully submitted,

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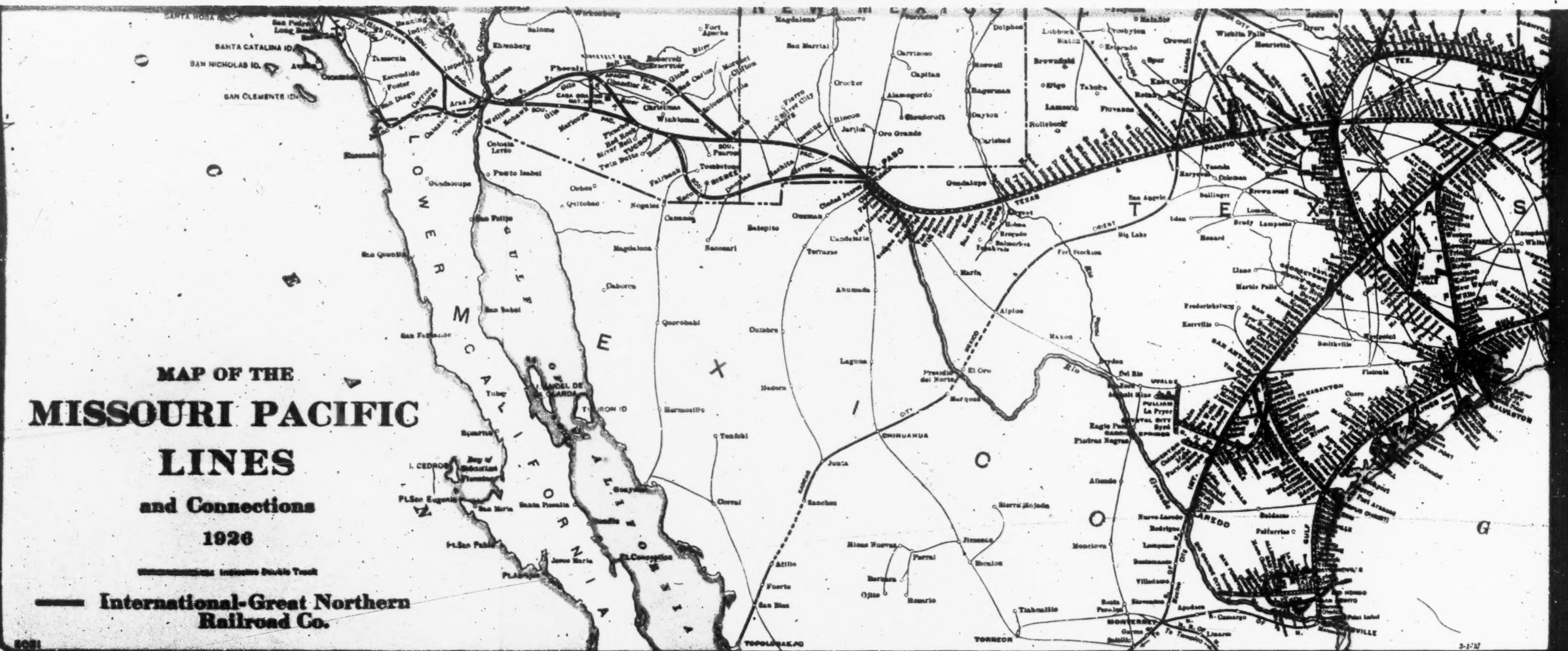


MAP OF THE MISSOURI PACIFIC LINES

and Connections
1926

Indicates Double Track

International-Great Northern
Railroad Co.





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